

Attorney for Defendant
NJ Properties Inc.

I,

INTRODUCTION

The Defendant NJ Properties, Inc. ("NJ") is the legal owner of the subject property and the lessor of Mundo's Cafe ("MC") which has also been sued in this action.

Plaintiff entered a default against NJ on September 13, 2016. NJ was not represented by counsel at the time default was entered against it and it's present counsel ("Weiser") was hired to represent NJ after such default was entered.

After NJ hired Weiser to represent it in this case, Weiser contacted Thomas Frankovich, Esq. ("Frankovich"), the attorney of record for the plaintiff, and requested in several conversations that the default against NJ be vacated and that NJ be permitted to file an answer to the complaint.

On February 20, 2017, NJ filed an ex-parte application to vacate the default and for leave to file an answer to the complaint which was granted by the court. At the time the ex-parte was granted, the present Article III judge was assigned to the case in lieu of the magistrate judge.

NJ contends that it purchased the subject property on April 19, 2016 before plaintiff allegedly first came to the property and does not control the lessee MC.

1 In Weiser's conversations with plaintiff's counsel, Frakovich requested that he send
2 proof that NJ did not own the subject property at the time of the incident.
3

4 On February 3, 2017, Weiser sent Frankovich by e-mail a copy of a grant deed that
5 Rakesh Panchal, recorded and vesting title to the subject property on April 19, 2016 in NJ's
6 name.
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8 Subsequently, plaintiff rejected NJ's claim that it was not liable claiming that the grant
9 deed indicates that it was signed signed and notarized on January 28, 2016, prior to the date
10 that plaintiff allegedly entered onto the subject property.

11 Plaintiff has no evidence that NJ was in possession or control of the subject property
12 prior to April 19, 2017 and, in fact, NJ entered into a written lease agreement with Mundo's
13 Cafe on April 27, 2017. A copy of the grant deed and lease agreement are attached as Exhibits
14 "A" and "B".
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16 As of October 11, 2017, all alleged ations of the ADA have been addressed and the
17 subject property is in compliance. A copy of pictures taken on Wednesday, October 11, 2017,
18 by Mr. Panchal is attached hereto as Exhibit "C".
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20 On May 11, 2018, Plaintiff entered into an agreement to dismiss the Defendant MC.
21 the site where the claimed barriers were encountered in exchange for payment of \$15,000 and
22 compliance with ADA requirements.
23

24 Plaintiff in its pre-trial conference statement now requests that this Court hold a trial
25 on alleged violations that were not alleged in the original complaint, or for that matte in the
26 First Amended Complaint. Further, Plaintiff requests that it be allowed to seek damages
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1 without any offset from its settlement with Mundo's. This is contrary to settled Ninth Circuit
2 law which does not allow a double recovery.
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6 **II.**
7 **ARGUMENT**
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9 **A. PLAINTIFF LACKS ARTICLE III STANDING**
10 **AGAINST THE DEFENDANT NJ**

11 Article III of the U.S. Constitution limits the jurisdiction of the district court and requires
12 as "the irreducible constitutional minimum of standing" that plaintiff show "(1) it has suffered
13 an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not
14 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the
15 defendant; and (3) it is likely, as opposed to merely speculative, that the injury, will be
16 redressed by a favorable decision." Krottner v Starbucks Corp., 628 F.3d 1139, 1141 (9th Cir.
17 2010).
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20 As an initial matter, NJ strongly disagrees that plaintiff has Article III standing to sue
21 it for alleged ADA violations before it took title and possession to the subject property as
22 plaintiff's injury is not fairly traceable to the challenged action of NJ. As was stated in Section
23 I., there is no evidence that NJ was in possession or control of the subject property prior to
24 April 19, 2017 and, in fact, all the evidence is to the contrary as NJ obtained legal title by way
25 of the grant deed on April 19, 2017 and entered into a written lease agreement with Mundo's
26 Cafe on April 27, 2017. (Exhibits "A"-"B").
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2 In Arizonans for Official English v Arizona, 520 U.S. 43 (1996), the U.S. Supreme
3 Court held that Article III standing required standing for each stage of the litigation. This
4 requirement certainly encompasses the requirement that standing exist at the time the
5 complaint is filed. See Preiser v Newkirk, 422 U.S. 395, 401 (1975) (to qualify as a case fit
6 for federal court adjudication, an actual controversy must be extant at all stages of review, not
7 merely at the time the complaint is filed).
8

9 As to the Plaintiff encountering barriers on March 11, 2016 and May 9, 2016
10 (Complaint, pg. 10, paragraph 26), this was close to a year before Defendant NJ took
11 possession and title to the subject property, Plaintiff lacked standing against Defendant NJ
12 at the very outset of the litigation. This cannot be cured by manufacturing alleged new visits
13 to the property after the complaint was filed. See Brother v CPL Investments, Inc., 317
14 F.Supp.2d 1358 (S.D. Fla. 2004) (plaintiffs in ADA case do not have standing complain about
15 alleged barriers they were unaware of at the time of the filing of the complaint).
16

17 Further, the settlement between the Plaintiff and MC now renders this case moot,
18 certainly as to the requested injunctive relief.
19

20 "The doctrine of mootness, which is embedded in Article III's case or controversy
21 requirement, requires that an actual, ongoing controversy exist at all stages of federal
22 court proceedings." Pitts v Terrible Jerbst, Inc., 653 F.3d 1081, 1086 (9th Cir. 2011). Because
23 the power of a federal court to decide the merits of a claim ordinarily evaporates
24 whenever a prerequisite to standing disappears, the doctrine of mootness has been described
25 as "the doctrine of standing set in a time frame." Native Village of Noatak v Blatchford, 38
26 F.3d 1505, 1509 (9th Cir. 1994).
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1 "The basic question in determining mootness is whether there is a present controversy
2 as to which effective relief can be granted." Rutz v City of Santa Maria, 160 F.3d 543, 549 (9th
3 Cir. 1998).

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5 Assuming, arguendo, that NJ did have possession and control of the subject property at
6 the time that this action was initiated, the claimed deficiencies have been corrected and there
7 is no effective equitable relief that the district court can fashion. If Plaintiff claims that they
8 are not corrected, then Plaintiff's remedy is still moot as it agreed that such relief would come
9 from MC, the owner and operator of the Cafe. A request for injunctive relief remains live only
10 so long as there is some present harm left to enjoin and past exposure to illegal conduct does
11 not in itself show a present case or controversy regarding injunctive relief if unaccompanied
12 by any continuing, present adverse effects. O'Neal v City of Seattle, 66 F.3d 1064, 1066
13 (9th Cir. 1995).

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16 Plaintiff claims statutory damages for the claimed violations but, as argued earlier, at
17 the time of the initial claimed violations plaintiff lacks standing against NJ.

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19 It has long been held that costs standing alone are insufficient to confer Article III
20 jurisdiction "where none exists on the merits of the underlying claim." Steel Co. v Citizens for
21 a Better Env't, 523 U.S. 83, 107 (1998). Rather, case or controversy sufficient to confer Article
22 III jurisdiction exists only when succeeding in the litigation will afford "the plaintiff some
23 other benefit besides reimbursement of costs that are a byproduct of the litigation."
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2 Finally, the Ninth Circuit clearly holds that a double recovery of damages; costs
3 or attorney fees are prohibited, both under this circuit's case law and under California law.
4 See Bravo v City of Santa Maria, 810 F.3d 659, 668 (9th Cir. 2016) (finding that a recovery
5 of costs and attorney's fees in a 42 U.S.C. Section 1983 action against one defendant pursuant
6 to a settlement agreement must be offset against the remaining defendant and further holding
7 that this rule is consistent with California law).
8

9 II.

10 CONCLUSION


11 Therefore, Defendant NJ respectfully requests that the case be dismissed
12 against Defendant NJ.
13

14 DATED: November 4, 2018

Respectfully submitted,

15 LAW OFFICES OF
16 FRANK A. WEISER

17
18 By:



19 FRANK A. WEISER, Attorney
20 for Defendant NJ PROPERTIES
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EXHIBIT "A"

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NEP Properties, Inc., a Washington corporation.
290 Alvarado Rd.
Marina del Rey, CA 90402

RANJEL 200
 210 ACB
 1078 AD

DOCUMENT: 2016020552

Taxes	Pages
Taxes	21.00
Taxes	7225.00
Other	1.00
TOTAL	8751.00

Fe^{+2}	0.000
Fe^{+3}	0.000

$$\gamma_{\text{eff}}^2 \approx \gamma_{\text{eff}}^2(0) + (W_0^2/\gamma_{\text{eff}}^2(0)) \left(1 - \frac{1}{2} \frac{S_{\text{eff}}}{S_0} \right) \approx \gamma_{\text{eff}}^2(0) + \frac{1}{2} \frac{W_0^2}{\gamma_{\text{eff}}^2(0)} \frac{S_{\text{eff}}}{S_0} \quad (20)$$

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THE UNIVERSITY OF TEXAS AT DALLAS, DALLAS, TEXAS 75275-0210, USA (e-mail: shirley@utdallas.edu)

S & Properties, Inc., a Washington corporation.

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DOI: 10.1002/for

doi:10.1017/S0022292412001607 Printed in the United Kingdom

11. Richard P. Pruthi 4/20/16
Vice President

12. R. Pruthi 4/23/16
Richard Pruthi, A.P. Secretary

MAN: TAYNOR, STEPHEN J. S. DIRECTOR, L.D. 840901

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NOTARY SEAL

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Owner: Esmeralda M. Campodónico

Current address: 1000 1st St

County where vehicle is filed: Haworth

Date of expiration of license: May 2, 2017

Manufacturer's Vehicle Identification number: 1414 A 2

PLACE OF EXECUTION: State

DATE: May 2, 2017

SIGNATURE: [Signature]
DPS Agent



LEGAL DESCRIPTION

TABLE 1.1

ENCLOSING FROM S&B LOT 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839,

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THE COUNTY ROAD WHERE SAID LINE OF SAID
COUNTY ROAD IS INTERSECTED BY THE DIVIDING LINE BETWEEN SAID LOTS NUMBERED 8 AND 14,
16-ACK NUMBERED 8 AS SHOWN UPON THE ADJUDICATED MAP, AND RUNNING THENCE SOUTH 71° 21' 42"
WEST ALONG THE SAID SOUTHERLY LINE OF COUNTY ROAD, STATE HIGHWAY NO. 1, THIRTY SIX AND
60 FEET THEREAFTER, WITH A 28' 7" WASH, AND THEN WITH THE SOUTHEASTERLY LINE OF SAID LOT
NUMBERED 14, FIVE AND ONE HALF FEET AND 100 FEET TO THE SOUTHEAST CORNER OF SAID LOT
NUMBERED 14, THENCE TO SOUTHWEST CORNER NORTH 44° 14' 10" EAST 60 FEET, AND ALONG THE
EAST LINE OF SAID LOT NUMBERED 14, TWO HUNDRED NINETY AND ONE FEET TO THE
NORTH EASTERLY CORNER OF SAID LOT NUMBERED 14, THENCE AT RIGHT ANGLES AND THENCE
NORTH, WESTERLY LINE OF SAID LOT NUMBERED 8, NORTH 44° 36' EAST, FIFTY AND ONE FEET,
THENCE AT RIGHT ANGLES, SOUTH 18° 32' EAST, TWO HUNDRED NINETY FEET, AND 100 FEET TO
THE SAID NORTHERLY LINE OF SAID COUNTY ROAD, THENCE SOUTH 71° 21' 42" WEST, ALONG SAID
SOUTHERLY LINE OF COUNTY ROAD, THIRTY SIX AND 60 FEET TO THE POINT OF BEGINNING.

BEING POINT AT THE MOST SOUTHERLY CORNER OF SAID LOT 17, THENCE NORTH 11° 15' 00" E ALONG THE NORTHEASTERLY LINE OF SAID LOT 17, 32 FEET TO A POINT; THENCE AT RIGHT ANGLE NORTHWESTERLY AND PARALLEL TO THE SOUTHWESTERLY LINE OF SAID LOT 17, 100 FEET TO A POINT; THENCE AT RIGHT ANGLE SOUTHWESTERLY AND PARALLEL TO THE SOUTHEASTERLY LINE OF SAID LOT 17, 100 FEET TO A POINT IN THE SOUTHWESTERN CORNER OF SAID LOT 17, THENCE S 80° 15' 00" E ALONG THE SOUTHWESTERLY LINE OF SAID LOT 17, 100 FEET TO THE POINT OF BEGINNING. S. 36-1-1-1, 1894 PERTAIN TO THE POINT OF BEGINNING.

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EXHIBIT "B"

California Commercial Lease Agreement

The current Geopac Lease Agreement ("Lease") is dated and effective April 3rd, 2017, at upon the close of business of the first sign located at 2267 S. Fremont St. Henderson, NV 89002 commonly known as the Red Roof Inn Henderson, Henderson, NV 89002 [Data], by and between:

Rakesh Panchal for MJ Properties Inc. (Landlord) ("Landlord") and Eli Munoz for Munoz's Cafe (Tenant)

located in the same orientation and to measurements corresponding to grid numbers as 2235 N. Element C1, 2309 and 2313, 13940, 13911, 13674, Address of Building (see 2313), distance between (see Building) 01411
[Legal Description of Building]

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• **Right of reversion to lease the leased premises to "another."** The lessee desires to lease the leased premises from landlady for the term of one year and owns the adjacent, adjoining and contiguous other land.

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As indicated hereby below, the above information is true and correct to the best of the undersigned's knowledge and belief as stated under penalty of perjury on April 24th, 2012 (Sworn Date) and ending April 1st, 2012, or from (1) year from the date of the signing of the Real Estate contract, or 2012 to 1999 and 1990, and the year 1990 is hereby known as the Real Estate Information, which was in 1990. (True Date)

2. Tenant shall pay to Landlord, during the term of this lease, the sum of \$1,200.00 per month, payable in installments of \$1,200.00 (Monthly Rental Amount) per month. Each installment payment shall be due on the first day of each month, and shall be remitted to Landlord at 222 E. Lincoln Ave., Chicago, IL 60606 (Landlord's Designated Payment Address) or at other place designated by written notice from Landlord to Tenant. The whole payment amount for each month shall be paid and received in full, less any amount deducted or early lease "break" and other charges due to the Landlord under the agreement. All payments received by

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Notwithstanding the foregoing, the U.S. and the U.K. do not intend to license, transfer for the purposes of storage, transfer, storage or selling any explosives, incendiaries or other inherently dangerous substances, chemicals, drug or device.

4. Synthesis and Assignment

Federal government have the jurisdiction and power to regulate interstate commerce with respect to interstate trade in commodities, and with the effect of interstate trade in commodities under contract control with respect to the production of commodities of interstate character. Except as herein provided, there shall not be subjected to the control of the Federal Government, or any of the States, any interstate or intrastate trade in commodities which is not subject to the control of the State in which it is produced.

2. Repairs

about six weeks' term, for which a large volume of exposure to freshwater systems is required in the United Kingdom. Planning and holding such a large number of species of plants, birds, insects, and other parts of the natural community is more information on the technology. Also during the term, a student should make at least a dozen releases of 25 existing captive-bred birds, and a few dozen of the same species, on the release process. And, of course, a student's photography and recording should be good.

Tenant shall be responsible for any new meters or additions to the property required by law or the City or Municipality.

14. Alterations and Improvements.

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of one or all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations and upon the Leased Premises, and fasten the same to the premises. All personal property and furniture, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the lease term or placed or installed in the Leased Premises by Tenant hereafter, shall remain Tenant's property and not of any owner by Landlord. Tenant shall have the right to remove the same at any time during the term of this lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

15. Property Taxes.

Landlord shall pay, prior to and upon receipt, all general real estate taxes and installments of special assessments coming due during the Lease term and the Leased Premises, and all personal property taxes with respect to Landlord's personal property if any, of the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property of the Leased Premises.

16. Insurance.

Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including movable trade fixtures, located in the Leased Premises.

Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including movable trade fixtures, located in the Leased Premises.

Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each of them jointly with the other and if each fully paid and before due date, issued by and binding upon some insurance company licensed by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain this agreement of Tenant's insurers to apply for and that a policy is due to expire at least 100 days prior to such expiration. Landlord shall not be required to maintain insurance against fire, theft, vandalism, or other perils.

17. Utilities.

Tenant shall pay all charges for water, sewer, gas, telephone, electricity, trash and any other services and utilities used by Tenant on the Leased Premises during the term of this lease unless otherwise expressly agreed in writing by Landlord. In the event that any of such services provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amount within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard of care and standard fixtures and standard amenity lighting. Tenant shall not use any equipment or devices that creates excess vibration, energy or which may, in Landlord's reasonable discretion, even the vibration of machinery with the normal operation of other tenants.

18. Signs.

Without Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse permission for any proposed signage that is in Landlord's opinion too large, excessive, unattractive or otherwise inconsistent with or disruptive to the Leased Premises. In case of any other tenant, Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or parking owners and landlords for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. Entry.

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not interfere unreasonably with Tenant's business on the Leased Premises.

12. Access.

During the term of this Lease, Tenant shall have the right to make use in common with itself and other tenants of the Building, their guests and employees of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees.

13. Building Rules.

Tenant shall comply with the building rules and regulations which Landlord from time to time and which shall be of its guests, employees, visitors and visitors to Tenant's premises. Such rules will be sent by Landlord to Tenant in writing. The initial rules for the Building are attached hereto as Exhibit "B" and be incorporated herein for all purposes.

14. Damage and Destruction.

Subject to Section 2.4. above, if the Leased Premises or any part thereof or any improvements thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Building, by making the repairs called for in this paragraph. Landlord shall not be liable for any delays resulting from such repairs, improvements, construction, or other matters which are beyond the reasonable control of Landlord. "Construction" is defined from any repairs and other charges during any portion of the lease term that the Leased Premises are unusable or with the occupancy, or use, in whole or in part, for Tenant's purposes. Repairs and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises.

15. Default.

Notwithstanding to any other provision made in the payment of rent when due by Landlord as herein provided, and if payment shall not continue for thirty (30) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice in writing to Tenant by Landlord, with or without notice thereof having been continued and hereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminate it by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy aforesaid provided, any other right or remedy not liable to be applied on account of a Tenant's default, whether or not remedy. Landlord shall use reasonable efforts to mitigate its damages.

16. Surrender.

1. Successors

The provisions of this Lease, shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

2. Consent

Landlord's consent not unreasonably withheld or delayed is consent with respect to any matter for which Landlord's consent is required or desirable. Landlord's consent.

3. Performance

If there is a default with respect to any of Landlord's covenants, covenants or representations under this lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option, and without affecting any other remedy hereunder, cure such default and deduct the cost of so doing, the cost including payment of installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenses. If the Lease terminates prior to cure, the amount involving full cure/settlement. Landlord will pay the unreimbursed expense incurred by Tenant.

4. Compliance with laws

Tenant shall comply with all laws, codes, ordinances and other public requirements now or hereafter pertaining to the use of the leased premises. These include any laws, regulations, and rules governed by the City of Monterey, CA. Landlord shall comply with all laws, codes, ordinances and other public requirements now or hereafter placed on the Leased Premises. Neither party, Landlord or Tenant, is responsible for the other party's breach of any laws, codes, and regulations. Landlord and Tenant each respectively take full responsibility of any issues that may arise in regards to compliance with laws.

5. Entire Agreement


This Agreement contains the entire agreement of the parties and no oral or written agreements or understandings shall be binding on the parties except as set forth herein. This Agreement may be modified in writing and shall be binding on the parties.

6. Governing Law

This Agreement shall be governed by, interpreted and construed by, through and under the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

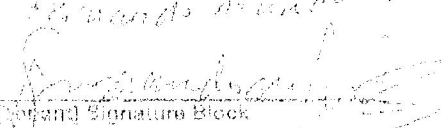
LANDLORD'S NAME
PERSONAL



(Landlord) Signature Block

(Date)

TENANT'S NAME
PERSONAL

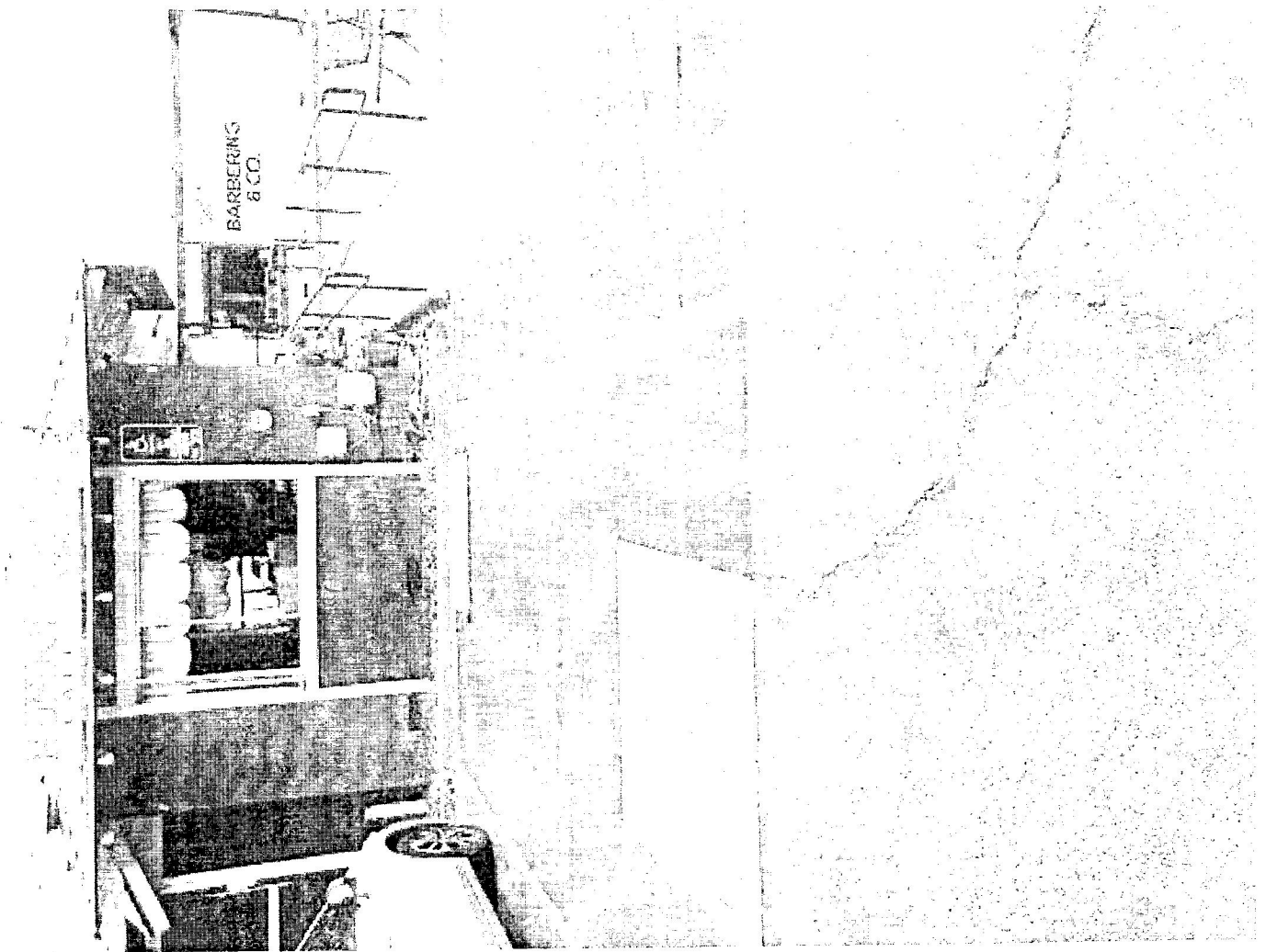


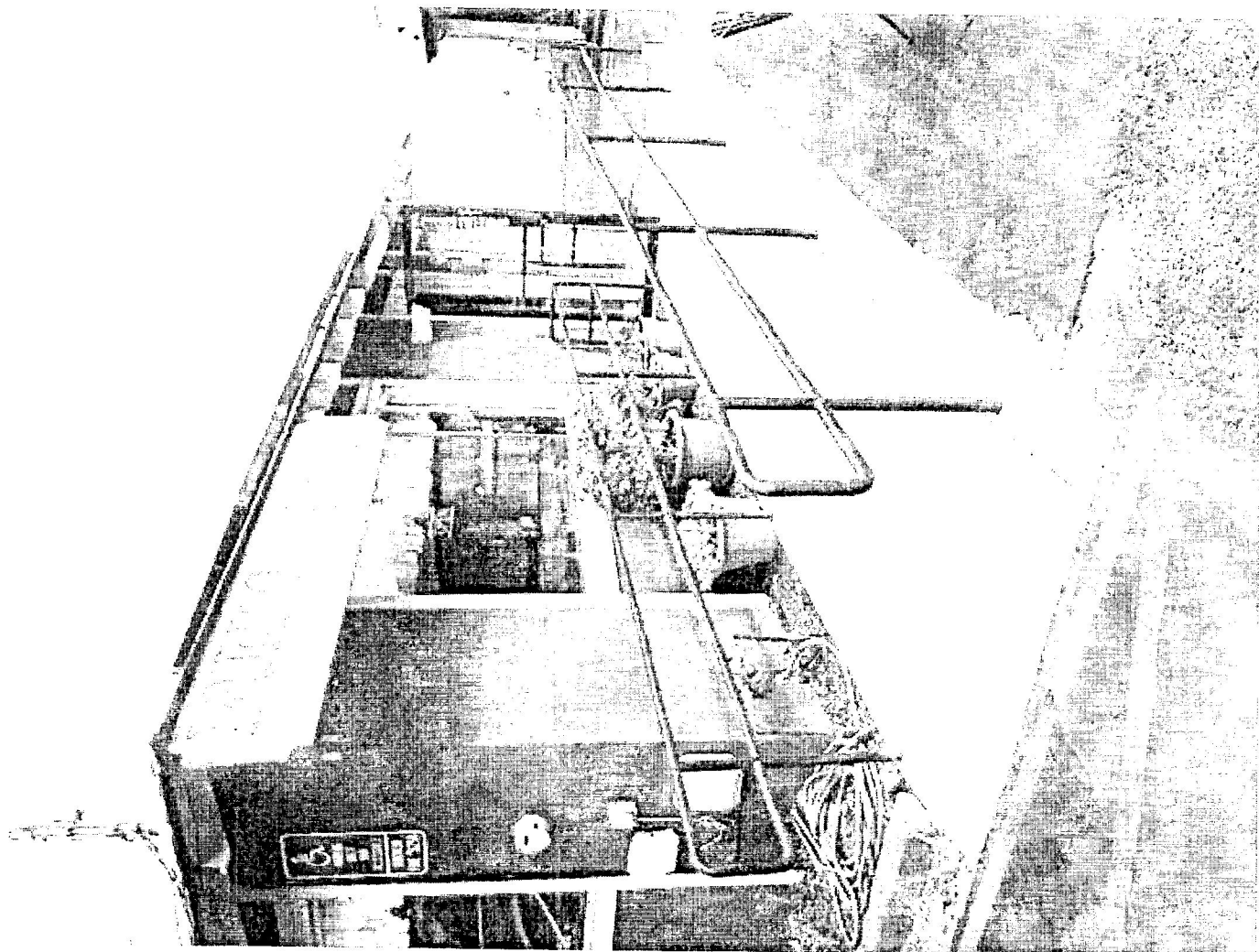
(Tenant) Signature Block

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EXHIBIT "C"





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